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No. 49

In the Supreme Court of the United States

OCTOBER TERM, 1964

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal from the Supreme Court of Louisiana

PETITION FOR RE-HEARING FROM THE DECISION OF THIS HONORABLE COURT REVERSING THE JUDGMENT OF THE SUPREME COURT OF LOUISIANA HEREIN

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SPECIFICATION OF ERROR NO. 1

It is respectfully submitted that the judgment of this Honorable Court herein reversing the judgment of the Louisiana Supreme Court based upon the premise that the appellant relied upon an administrative interpretation of the word, "near", and that to sustain his conviction would be tantamount to an "indefensible sort of entrapment" of him by the State, is erroneous.

ARGUMENT

Now into this Honorable Court comes the State of Louisiana, through counsel, and respectfully prays for a re-hearing of this case before a full bench for the reasons hereinafter stated.

It is stated in the majority opinion,

". . . It is clear that the statute, with respect to the determination of how near the courthouse a particular demonstration can be, foresees a degree of on the spot administrative interpretation by officials charged with responsibility for administering and enforcing it. It is apparent that the demonstrators, such as those involved here, would justifiably tend to rely on this administrative interpretation of how 'near the courtroom a particular demonstration might take place . . .' The record here clearly shows that the officials present gave permission for the demonstration to take place across the street from the courthouse . . . this testimony is not only uncontradicted, but is corroborated by the State's witnesses who were present. Police Chief White testified that he told Cox 'he must confine' the demonstration 'to the west side of the street.'" Majority Opinion, Justice Goldberg, pages 10 and 11.

This record does not reflect that Cox ever sought or relied upon any administrative interpretation of how near to the courthouse this particular demonstration might take place. Just prior to this conversation that Chief White had with Cox, and within two blocks from where the conversation which he had with White took place, Cox had a prior conversation with Captain Font of the City Police Department and Chief Kling of the Sheriff's Office, wherein this court correctly interpreted what happened.

"Kling asked Cox to disband the group and 'take them back from whence they came.' Cox did not

acquiesce in this request but told the officers that they would march by the courthouse, say prayers, sing hymns and conduct a peaceful program of protest. The officer repeated his request to disband and Cox again refused. Kling and Font then returned to their car in order to report by radio to the Sheriff and Chief of Police who were in the immediate vicinity; while this was going on, the students, led by Cox, began their walk toward the courthouse." See Majority Opinion, Mr. Justice Goldberg, *B. Elton Cox v. State of Louisiana*, No. 24, October Term, 1964, this Court's docket, page 3.

It is unrefuted that at that particular time and point Cox did not seek permission as to where to hold this demonstration, and he informed these officers that they were going to march by the courthouse. This record does not contain any evidence whatsoever of any reliance upon any administrative advice given by anyone.

"They walked in an orderly and peaceful file two or three abreast one block east, stopping on the way for a red traffic light. In the center of this block they were joined by another group of students. The augmented group now totaling about 2,000, turned the corner and proceeded south, coming to a halt in the next block opposite the courthouse.

"As Cox, still at the head of the group, approached the vicinity of the courthouse, he was stopped by Captain Font and Inspector Trigg and brought to Police Chief Wingate White, who was standing in the middle of St. Louis Street.

> The Chief then inquired as to the purpose of the demonstration. Cox, reading from a prepared paper, outlined his program to White, stating that it would include a singing of the Star Spangled Banner and a freedom song, recitation of the Lord's Prayer and a Pledge of Allegiance, and a short speech. White testified that he told Cox that he 'must confine' the demonstration 'to the west side of the street.' White added, 'This, of course, was not—I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision.' "

Further testifying, Cox said:

> "My understanding was that they would be allowed to demonstrate if they stayed on the west side of the street and stayed within the recognized time. And this was agreed to by White."

This Honorable Court erred herein in accepting the testimony of Cox with reference to his reliance upon alleged permission by Chief White and in rejecting the testimony of Chief White with reference to the fact that he didn't mean to import that he was giving any permission to do anything, but that he was presented with a situation that was accomplished and that he had to make a decision. This court erred in accepting the self-serving declaration of Cox with reference to permission, because to do so, would be in complete disharmony with what this record shows had previously happened. See Majority Opinion, *Cox v. Louisiana*, Mr. Justice Goldberg No. 24, October Term, 1964, pages 3 and 4. This court accepts the evidence

that applied to Cox's and White's short conversation, and also the evidence that a short distance therefrom when confronted by Captain Font and Chief Kling and ordered to disband and go from whence they came, that Cox, not once but on two occasions, stated his declared intention of going to demonstrate, to protest the illegal arrest of several of their people who were being held in jail, and they would march by the courthouse. This testimony is not consistent with the acceptance of the self-serving declaration by Cox that he relied upon Chief White's statement. Not only did Cox not seek permission from Captain Font and Chief Kling with reference to where he might demonstrate, but no permission was sought from Chief White. In order to further corroborate Cox's statement to Captain Font and Chief Kling that he was going to the courthouse to demonstrate, he actually left them, and before he was actually intercepted by Chief White, he was on the same street that runs next to the courthouse, headed toward the courthouse, and when intercepted by White was in the next block opposite the courthouse. It is also significant to note that Cox did not seek White out, rather White intercepted Cox and had Cox brought to him. At that time, of course, White had received a communication by radio from Captain Font and Chief Kling which was made immediately after their conversation with Cox. It is stated in the majority opinion in this case, Mr. Justice Goldberg, at page 11:

> "The record shows that at no time did the police recommend or even suggest, that the demonstra-

tion be held further from the courthouse than it actually was."

The simple answer to that observation of the record is that evidence does show, without refutation, that Cox was asked "to disband the group and take them back from whence they came." Majority Opinion No. 24, October Term, 1964, Mr. Justice Goldberg, page 3.

The Majority Opinion herein states that it would be an indefensible sort of entrapment by the State to sustain this conviction of a citizen for exercising a privilege which the State has clearly told him was available to him.

The rationale of the legal concept of entrapment is that officers of the law shall not incite crime merely to punish the criminal. In keeping with this philosophy which sustains it, the defense of this entrapment has a limited application. It is restricted to those instances in which the defendant is induced or incited to commit a crime, not originally intended or contemplated by him for the purpose of arresting and prosecuting him. The fact that an opportunity is furnished or that the defendant is aided in the commission of a crime which originated in his own mind constitutes no defense. There is a clear distinction between inducing a person to commit a crime and setting a trap to catch him in the execution of the criminal designs of his own conceptions. In the judicial formulation of this doctrine, the primary emphasis is on the defendant's predisposition to commit the crime. The limitations implicit in the doctrine itself have been uni-

versally recognized. *State of Louisiana v. Jim Turner and Seymour Wheeler*, 127 So. 2d 514, 241 La. 95. 22 Corpus Juris Secundum, Section 45, page 99. This record, of course, does not meet the preceding criterion in order to constitute entrapment.

This idea of the demonstration near the courthouse originated with this appellant during the early morning hours preceding this demonstration which occurred during the noon hour of that date at a distance of some five miles north of the courthouse. The execution of this plan to demonstrate at the courthouse commenced some five miles north of the courthouse and proceeded to the Old State Capitol Building, which is situated about three blocks from the courthouse. At that place and at that time, appellant, Cox, declared to Officers Kling and Font his intention to demonstrate at the courthouse. His actions thereafter confirmed his declared intention, for he and his group started toward the courthouse until they were intercepted by Chief White in the block next to the courthouse while walking along the west sidewalk of St. Louis Street, which runs parallel and adjacent to the courthouse. After the public declaration of their intention to demonstrate at the courthouse that morning, at the noon hour when they were intercepted by Chief White, they had come within one block of their declared destination. In view of the foregoing, as supported by this record, it could not be said that the activity in which this appellant was engaged did not originate in his mind. It could not be said that Cox, at a time which the execution of this

predeclared plan was practically culminated, was induced by Chief White. Cox could not have gotten any further away from the courthouse than on the west sidewalk along St. Louis Street, which is where he was and which is where he intended to stay, prior to his interception by Chief White. Additionally, this court in its phraseology "indefensible sort of entrapment by the State" ostensibly recognizes that this is not a case of legal entrapment as universally known. This phraseology is taken by this court from *Raley v. Ohio*, 360 U.S. 423, which this court submits as authority for its holding in this case. In *Raley*, the setting of the alleged criminal acts, contempt of the commission, were held in a commission hearing room pursuant to prior notice of hearing and matter to be investigated. The Commission, or one of its members, expressly informed the accused that they enjoyed the privilege under the Fifth Amendment to refuse to answer questions that might tend to incriminate them. The privilege was so claimed by these defendants. In no case did the commission direct that the defendants answer the questions to which they had pleaded the privilege. Thus, *Raley* presents a situation which occurred during a formal hearing of a legislative committee, whose members had specifically instructed some of the appellants therein that they were entitled to claim the privilege against self-incrimination; that these defendants so claimed said privilege, and that without any insistence or direction to the defendants to answer the particular questions to which they had claimed the privilege they were indicted for contempt

of the said Committee. The facts of *Raley* fully support the decision of this court that to sustain said convictions would be an indefensible sort of entrapment by the State. In *Raley*, the subject matter forming the basis of the charges were fully discussed in the quiet and formal environs of a committee hearing room.

The factual circumstances in the case at bar envisions a crowd of some 2,000, who had come from approximately five miles away toward their destination pursuant to the proclaimed declaration through the news media and to various law enforcement officers to demonstrate against the alleged illegal arrest of some of their members near the courthouse. It was while these marchers were out on the sidewalk marching toward their declared goal, when they were intercepted by White who informed them to keep the demonstration on the west sidewalk of St. Louis Street. This statement by White was not made in response to a request by Cox, but it was apparently made on White's own initiative in an atmosphere of apprehension, and; as White himself so testified, he did not intend that it be giving Cox permission to hold this demonstration.

It is respectfully submitted that in all due deference to this court's holding in its Majority Opinion, the *Raley* case is not applicable to the case at bar.

In order to arrive at its decision herein and the premises upon which it is based, the Majority Opinion holds that Louisiana Revised Statute 14:401 en-

visions and foresees a degree of administrative interpretation, which, in effect, was sought by Cox, made by Chief White, and relied upon by Cox to his detriment in the form of this State conviction. This court upholds the validity of the authority giving right to make such an administrative interpretation, citing *Cox v. New Hampshire*, 312 U.S. 569.

In the foregoing cited case, the statute therein, with which this court was concerned, specifically delegated authority to a licensing committee who had the authority under specific guidelines to issue permits for various theatrical and dramatic exhibitions. LSA-R.S. 14:401, of course, refers to no agency dutybound to make any administrative decision with reference to its application. Any time an officer makes an arrest for a misdemeanor which he deems to have been committed within his presence, he must make a determination as to whether the misdemeanor is or is not being committed, and, therefore, as to whether he should or should not make the arrest. The interpretation for the alleged violation resulting in a conviction is for the judiciary, and not the police officer making the arrest. To nullify this conviction as this court has done on the basis of what some officer has said under the circumstances of this case would be to relegate the effective enforcement of State laws to the action of some police officer rather than to the judiciary after a full hearing on the merits of the case.

SPECIFICATION OF ERROR NO. 2

This Honorable Court in reversing herein based

its decision upon the grounds that the Louisiana State Supreme Court could not consider.

Article 7, Section 10 of the Louisiana Constitution of 1921, provides that the appellate jurisdiction of the Supreme Court of Louisiana shall extend in criminal cases to questions of law alone. Thus, the Louisiana Supreme Court is powerless to consider and does not pass upon the sufficiency of evidence in a criminal case. *State v. Alnerico*, 232 La. 847; 93 So. 2d 334. *State v. Hand*, 228 La. 405, 82 So. 2d 691; *State v. Hilliard*, 227 La. 288, 78 So. 2d 835; *State v. Paternostio*, 225 La. 369, 73 So. 2d 177. Since the Louisiana Supreme Court is limited in its review of criminal cases to questions of law only, and is prohibited by the Louisiana Constitution from passing upon the sufficiency of evidence, this court under its own mandate of review of state criminal cases should consider itself so constrained. If there is some evidence, no matter how little, to support a conviction, the Louisiana Supreme Court is constitutionally constrained to accept it, the question of sufficiency being beyond the scope of its constitutional right and power to review. Also, this court has held that whether a conviction was unconstitutional under the due process of law clause depended upon whether such conviction rested upon any evidence at all rather than upon the sufficiency of evidence. *Thompson v. City of Louisville, Kentucky*, (1960) 80 Sup. Ct. 624, 360 U.S. 199, 4 Law Ed. 2d 654.

This is not a case where the record herein is so totally devoid of evidentiary support of the state con-

viction as to be unconstitutional under the due process clause. There is a difference between a conviction based upon evidence deemed insufficient as a matter of state law and one so totally devoid of evidentiary support as to raise the due process issue, and it is only in the latter situation that there is a violation of the due process clause. *Grundlur v. North Carolina*, C.A.N.C. (1960) 283 F. 2d 798.

It is respectfully submitted that to maintain the holding of this court with reference to this reversal would be to do violence to the foregoing laws as enunciated in the cited cases.

It is respectfully submitted that this petition for re-hearing should be granted and that a re-hearing of this case should be had before a full bench.

Respectfully submitted,

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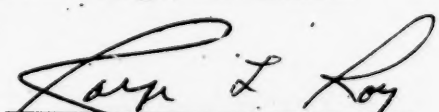
By:



RALPH L. ROY

CERTIFICATE

I CERTIFY that this petition is presented in good faith and not for delay.

I further certify that a copy of this petition for re-hearing has been served upon counsel of record for the defendants herein, prior to filing of same, by U. S. Mail, with sufficient postage affixed thereto, properly addressed to their respective offices.

Baton Rouge, Louisiana, this 3rd day of February, 1965.

Ralph L. Roy

RALPH L. ROY
Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

No. 49.—October Term, 1964.

B. Elton Cox, Appellant, *v.* State of Louisiana.	On Appeal From the Supreme Court of Louisiana.

[January 18, 1965.]

Mr. Justice Goldberg delivered the opinion of the Court.

Appellant was convicted of violating a Louisiana statute which provides:

> "Whoever, with the intent of interfering with, obstructing or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana .... shall be fined not more than five thousand dollars or imprisoned not more than one year, or both." La. Rev. Stat. § 14:401 (Cum. Supp. 1962).

This charge was based upon the same set of facts as the "disturbing the peace" and "obstructing a public passage" charges involved and set forth in No. 24, *ante*, and was tried along with those offenses. Appellant was convicted on this charge also and was sentenced to the maximum penalty under the statute of one year in jail and a $5,000 fine, which penalty was cumulative with those in No. 24. These convictions were affirmed by the Louisiana Supreme Court, 245 La. 303, 158 So. 2d 172. Appellant appealed to this Court contending that the statute was unconstitutional on its face and as applied to him. We noted probable jurisdiction, 377 U. S. 921.

I.

We shall first consider appellant's contention that this statute must be declared invalid on its face as an unjustified restriction upon freedoms guaranteed by the First and Fourteenth Amendments to the United States Constitution.

This statute was passed by Louisiana in 1950 and was modeled after an identical statute pertaining to the federal judiciary, which Congress passed in 1949, 64 Stat. 1018, 18 U. S. C. § 1507 (1958 ed.). Since that time, Massachusetts and Pennsylvania have passed similar statutes. Mass. Ann. Laws, 1956, c. 268, § 13A; Purdon's Pa. Stat. Ann., 1963, Tit. 18, § 4327. The federal statute resulted from the picketing of federal courthouses by partisans of the defendants during trials involving leaders of the Communist Party. This picketing prompted an adverse reaction both from the bar and the general public. A number of groups urged legislation to prohibit it. At a special meeting held in March 1949, the Judicial Conference of the United States passed the following resolution: "*Resolved*, That we condemn the practice of picketing the courts, and believe that effective means should be taken to prevent it." Report of the Judicial Conference of the United States, 203 (1949). A Special Committee on Proposed Legislation to Prohibit Picketing of the Courts was appointed to make recommendations to the Conference on this subject. *Ibid.* In its Report to the Judicial Conference, dated September 23, 1949, at p. 3, the Special Committee stated: "The sentiment of bar associations and individual lawyers has been and is practically unanimous in favor of legislation to prohibit picketing of courts." Upon the recommendation of this Special Committee, the Judicial Conference urged the prompt enactment of the then pending bill. Report of the Judicial Conference of the United States, 17–18 (1949). Similar recommendations were made by

the American Bar Association, numerous state and local bar associations, and individual lawyers and judges. See Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 1681 and H. R. 3766, 81st Cong., 1st Sess.; H. R. Rep. No. 1281, 81st Cong., 1st Sess.; S. Rep. No. 732, 81st Cong., 1st Sess.; Bills Condemning Picketing of Courts Before Congress, 33 J. Am. Jud. Soc. 53 (1949).

This statute, unlike the two previously considered, is a precise, narrowly drawn regulatory statute which proscribes certain specific behavior. Cf. *Edwards* v. *South Carolina*, 372 U. S. 229, 236. It prohibits a particular type of conduct, namely, picketing and parading, in a few specified locations, in or near courthouses.

There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy. See *Wood* v. *Georgia*, 370 U. S. 375, 383. The constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial "in a courtroom presided over by a judge." *Rideau* v. *Louisiana*, 373 U. S. 723, 727. There can be no doubt that they embrace the fundamental conception of a fair trial, and that they exclude influence or domination by either a hostile or friendly mob. There is no room at any stage of judicial proceedings for such intervention; mob law is the very antithesis of due process. See *Frank* v. *Mangum*, 237 U. S. 309, 347 (Holmes, J., dissenting). A State may adopt safeguards necessary and appropriate to assure that

the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law.

Nor does such a statute infringe upon the constitutionally protected rights of free speech and free assembly. The conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association. The examples are many of the application by this Court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited. The most classic of these was pointed out long ago by Mr. Justice Holmes: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Schenck* v. *United States*, 249 U. S. 47, 52. A man may be punished for encouraging the commission of a crime, *Fox* v. *Washington*, 236 U. S. 273, or for uttering "fighting words," *Chaplinsky* v. *New Hampshire*, 315 U. S. 568. This principle has been applied to picketing and parading in labor disputes. See *Hughes* v. *Superior Court*, 339 U. S. 460; *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; *Building Service Employees* v. *Gazzam*, 339 U. S. 532. But cf. *Thornhill* v. *Alabama*, 310 U. S. 88. These authorities make it clear, as the Court said in *Giboney*, that "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Giboney* v. *Empire Storage and Ice Co.*, *supra*, at 502.

Bridges v. *California*, 314 U. S. 252, and *Pennekamp* v. *Florida*, 328 U. S. 331, do not hold to the contrary. Both these cases dealt with the power of a judge to sentence for contempt persons who published or caused to be pub-

lished writings commenting on judicial proceedings. They involved newspaper editorials, an editorial cartoon, and a telegram sent by a labor leader to the Secretary of Labor. Here we deal not with the contempt power—a power which is "based on a common law concept of the most general and undefined nature." *Bridges* v. *California, supra,* at 260. Rather, we are reviewing a statute narrowly drawn to punish specific conduct that infringes a substantial state interest in protecting the judicial process. See *Cantwell* v. *Connecticut,* 310 U. S. 296, 307–308; *Giboney* v. *Empire Storage & Ice Co., supra.* We are not concerned here with such a pure form of expression as newspaper comment or a telegram by a citizen to a public official. We deal in this case not with free speech alone, but with expression mixed with particular conduct. In *Giboney,* this Court expressly recognized this distinction when it said, "In holding this, we are mindful of the essential importance to our society of a vigilant protection of freedom of speech and press. *Bridges* v. *California,* 314 U. S. 252, 263. States cannot consistently with our Constitution abridge those freedoms to obviate slight inconveniences or annoyances. *Schneider* v. *State,* 308 U. S. 147, 162. But placards used as an essential and inseparable part of a grave offense against an important public law cannot immunize that unlawful conduct from state control." 336 U. S., at 501–502.

We hold that this statute on its face is a valid law dealing with conduct subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection.

II.

We now deal with the Louisiana statute as applied to the conduct in this case. The group of 2,000, led by appellant, paraded and demonstrated before the court-

house. Judges and court officers were in attendance to discharge their respective functions. It is undisputed that a major purpose of the demonstration was to protest what the demonstrators considered an "illegal" arrest of 23 students the previous day. While the arraignment or trial of the students had not been set for any day certain, they were charged with violation of the law, and the judges responsible for trying them and passing upon the legality of their arrest were then in the building.

It is, of course, true that most judges will be influenced only by what they see and hear in court. However, judges are human; and the legislature has the right to recognize the danger that some judges, jurors, and other court officials, will be consciously or unconsciously influenced by demonstrations in or near their courtrooms both prior to as well as at the time of the trial. A State may also properly protect the judicial process from being misjudged in the minds of the public. Suppose demonstrators paraded and picketed for weeks with signs asking that indictments be dismissed, and that a judge, completely uninfluenced by these demonstrations, dismissed the indictments. A State may protect against the possibility of a conclusion by the public under these circumstances, that the judge's action was in part a product of intimidation and did not flow only from the fair and orderly working of the judicial process. See S. Rep. No. 732, 81st Cong., 1st Sess., 4.

Appellant invokes the clear and present danger doctrine in support of his argument that the statute cannot constitutionally be applied to the conduct involved here. He says, relying upon *Pennekamp* and *Bridges*, that "[n]o reason exists to apply a different standard to the case of a criminal penalty for a peaceful demonstration in front of a courthouse than the standard of clear and

present danger applied in the contempt cases." He defines the standard to be applied to both situations to be whether the expression of opinion presents a clear and present danger to the administration of justice.

We have already pointed out the important differences between the contempt cases and the present one, *supra*, at 4–5. Here we deal not with the contempt power but with a narrowly drafted statute and not with speech in its pristine form but with conduct of a totally different character. Even assuming the applicability of a general clear and present danger test, it is one thing to conclude that the mere publication of a newspaper editorial or a telegram to a Secretary of Labor, however critical of a court, presents no clear and present danger to the administration of justice and quite another thing to conclude that crowds, such as this, demonstrating before a courthouse may not be prohibited by a legislative determination based on experience that such conduct inherently threatens the judicial process. We therefore reject the clear and present danger argument of appellant.

III.

Appellant additionally argues that his conviction violated due process as there was no evidence of intent to obstruct justice or influence any judicial official as required by the statute. *Thompson* v. *Louisville*, 362 U. S. 199. We cannot agree that there was no evidence within the "due process" rule enunciated in *Thompson* v. *Louisville*. We have already noted that various witnesses and Cox himself stated that a major purpose of the demonstration was to protest what was considered to be an illegal arrest of 23 students. Thus, the very subject matter of the demonstration was an arrest which is normally the first step in a series of legal proceedings. The demonstration was held in the vicinity of the courthouse

where the students' trials would take place. The courthouse contained the judges who in normal course would be called upon to try the students' cases just as they tried appellant. Ronnie Moore, the student leader of the demonstration, a defense witness, stated, as we understand his testimony, that the demonstration was in part to protest injustice; he felt it was a form of "moral persuasion" and hoped it would have its effects. The fact that the students were not then on trial and had not been arraigned is not controlling in the face of this affirmative evidence manifesting the plain intent of the demonstrators to condemn the arrest and ensuing judicial proceedings against the prisoners as unfair and unwarranted. The fact that by their lights appellant and the 2,000 students were seeking justice and not its obstruction is as irrelevant as would be the motives of the mob condemned by Justice Holmes in *Frank* v. *Mangum*, *supra*. Louisiana, as we have pointed out *supra*, has the right to construe its statute to prevent parading and picketing from unduly influencing the administration of justice at any point or time in its process, regardless of whether the motives of the demonstrators are good or bad.

While this case contains direct evidence taking it out of the *Thompson* v. *Louisville* doctrine, even without this evidence, we would be compelled to reject the contention that there was no proof of intent. Louisiana surely has the right to infer the appropriate intent from circumstantial evidence. At the very least, a group of demonstrators parading and picketing before a courthouse where a criminal charge is pending, in protest against the arrest of those charged, may be presumed to intend to influence judges, jurors, witnesses or court officials. Cf. *Screws* v. *United States*, 325 U. S. 91, 107 (opinion of MR. JUSTICE DOUGLAS).

Absent an appropriately drawn and applicable statute, entirely different considerations would apply if, for exam-

ple, the demonstrators were picketing to protest the actions of a mayor or other official of a city completely unrelated to any judicial proceedings, who just happened to have an office located in the courthouse building. Cf. *In the Matter of Brinn*, 305 N. Y. 887, 114 N. E. 2d 430; Joint Hearings, *supra*, at 20.

IV.

There are, however, more substantial constitutional objections arising from appellant's conviction on the particular facts of this case. Appellant was convicted for demonstrating not "in," but "near" the courthouse. It is undisputed that the demonstration took place on the west sidewalk, the far side of the street, exactly 101 feet from the courthouse steps and, judging from the pictures in the record, approximately 125 feet from the courthouse itself. The question is raised as to whether the failure of the statute to define the word "near" renders it unconstitutionally vague. See *Lanzetta* v. *New Jersey*, 306 U. S. 451. Note, The Void for Vagueness Doctrine in the Supreme Court, 109 U. Pa. L. Rev. 67. It is clear that there is some lack of specificity in a word such as "near." [1] While this lack of specificity may not render the statute unconstitutionally vague, at least as applied to a demonstration within the sight and hearing of those in the courthouse,[2] it is clear that the statute, with respect to

[1] This is to be contrasted, for example, with the express limitation proscribing certain acts within 500 feet of foreign embassies, legations, or consulates within the District of Columbia. 52 Stat. 30 (1938); D. C. Code, 1961, § 22–1115. See also McKinney's N. Y. Laws, Penal Law § 600 (prohibiting certain activities within 200 feet of a courthouse).

[2] Cf. *United States* v. *National Dairy Products Corp.*, 372 U. S. 29; Note, 109 U. Pa. L. Rev., *supra*. Cf. *Cole* v. *Arkansas*, 333 U. S. 196 (holding constitutional a statute making certain types of action unlawful if done "at or near" any place where a labor dispute exists, though the issue of the possible vagueness of the word "near" in the context of that case was not expressly faced).

the determination of how near the courthouse a particular demonstration can be, forsees a degree of on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing it. It is apparent that demonstrators, such as those involved here, would justifiably tend to rely on this administrative interpretation of how "near" the courthouse a particular demonstration might take place. Louisiana's statutory policy of preserving order around the courthouse would counsel encouragement of just such reliance. This administrative discretion to construe the term "near" concerns a limited control of the streets and other areas in the immediate vicinity of the courthouse and is the type of narrow discretion which this Court has recognized as the proper role of responsible officials in making determinations concerning the time, place, duration, and manner of demonstrations. See *Cox* v. *New Hampshire*, 312 U. S. 569; *Poulos* v. *New Hampshire*, 345 U. S. 395. See generally the discussion on this point in No. 24, pp. 16–21, *ante*. It is not the type of unbridled discretion which would allow an official to pick and choose among expressions of view the ones he will permit to use the streets and other public facilities, which we have invalidated in the obstruction of public passages statute as applied in No. 24, *ante*. Nor does this limited administrative regulation of traffic which the Court has consistently recognized as necessary and permissible, constitute a waiver of law which is beyond the power of the police. Obviously telling demonstrators how far from the courthouse steps is "near" the courthouse for purposes of a permissible peaceful demonstration is a far cry from allowing one to commit, for example, murder, or robbery.[3]

[3] See American Law Institute, Model Penal Code § 2.04 (3) (b) and comment thereon, Tentative Draft No. 4, pp. 17–18, 138–139; Hall and Seligman, Mistake of Law and Mens Rea, 8 U. Chi. L. Rev. 641, 675–677 (1941); *People* v. *Ferguson*, 134 Cal. App. 41, 24 P. 2d 965.

The record here clearly shows that the officials present gave permission for the demonstration to take place across the street from the courthouse. Cox testified that they gave him permission to conduct the demonstration on the far side of the street. This testimony is not only uncontradicted but is corroborated by the State's witnesses who were present. Police Chief White testified that he told Cox "he must confine" the demonstration "to the west side of the street." [4] James Erwin, news director of radio station WIBR, agreed that Cox was given permission for the assembly as long as it remained within a designated time. When Sheriff Clemens sought to break up the demonstration, he first announced, "now you have been allowed to demonstrate." [5] The Sheriff testified that he had "no objection" to the students "being assembled on that side of the street." Finally, in its brief before this Court, the State did not contend that permission was not granted. Rather in its statement of the facts and argument it conceded that the officials gave Cox and his group some time to demonstrate across the street from the courthouse. This agreement by the State that in fact permission had been granted to demonstrate across the street from the courthouse—at least for a limited period of time, which the State contends was set at seven minutes—was confirmed by counsel for the State in oral argument before this Court.

The record shows that at no time did the police recommend, or even suggest, that the demonstration be held further from the courthouse than it actually was. The police admittedly had prior notice that the demonstration was planned to be held in the vicinity of the courthouse. They were prepared for it at that point and so stationed

[4] It is true that the Police Chief testified that he did not subjectively intend to grant permission, but there is no evidence at all that this subjective state of mind was ever communicated to appellant, or in fact to anyone else present.

[5] See p. 13, *infra*, for the Sheriff's full statement at this time.

themselves and their equipment as to keep the demonstrators on the far side of the street. As Cox approached the vicinity of the courthouse, he was met by the Chief of Police and other officials. At this point not only was it not suggested that they hold their assembly elsewhere, or disband, but they were affirmatively told that they could hold the demonstration on the sidewalk of the far side of the street, 101 feet from the courthouse steps. This area was effectively blocked off by the police and traffic rerouted.

Thus, the highest police officials of the city, in the presence of the Sheriff and Mayor, in effect told the demonstrators that they could meet where they did, 101 feet from the courthouse steps, but could not meet closer to the courthouse. In effect, appellant was advised that a demonstration at the place it was held would not be one "near" the courthouse within the terms of the statute.

In *Raley* v. *Ohio*, 360 U. S. 423, this Court held that the Due Process Clause prevented conviction of persons for refusing to answer questions of a state investigating commission when they relied upon assurances of the commission, either express or implied, that they had a privilege under state law to refuse to answer, though in fact this privilege was not available to them. The situation presented here is analogous to that in *Raley*, which we deem to be controlling. As in *Raley*, under all the circumstances of this case, after the public officials acted as they did, to sustain appellant's later conviction for demonstrating where they told him he could "would be to sanction an indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State had clearly told him was available to him." *Id.*, at 426. The Due Process Clause does not permit convictions to be obtained under such circumstances.

This is not to say that had the appellant, entirely on his own, held the demonstration across the street from the courthouse within the sight and hearing of those inside, or *a fortiori*, had he defied an order of the police requiring him to hold this demonstration at some point further away out of the sight and hearing of those inside the courthouse, would we reverse the conviction as in this case. In such cases a state interpretation of the statute to apply to the demonstration as being "near" the courthouse would be subject to quite different considerations. See pp. 9–10, *supra*.

There remains just one final point: the effect of the Sheriff's order to disperse. The State in effect argues that this order somehow removed the prior grant of permission and reliance on the officials' construction that the demonstration on the far side of the street was not illegal as being "near" the courthouse. This, however, we cannot accept. Appellant was led to believe that his demonstration on the far side of the street violated no statute. He was expressly ordered to leave, not because he was peacefully demonstrating too near the courthouse, nor because a time limit originally set had expired, but because officials erroneously concluded that what he said threatened a breach of the peace. This is apparent from the face of the Sheriff's statement when he ordered the meeting dispersed: "Now you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has got to be broken up immediately." See discussion in No. 24, *ante*, at 9–14. Appellant correctly conceived, as we have held in No. 24, *ante*, that this was not a valid reason for the dispersal order. He therefore was still justified in his continued belief that because of the original official grant of permission he had a right to stay where he was for

the few additional minutes required to conclude the meeting. In addition, even if we were to accept the state's version that the sole reason for terminating the demonstration was that appellant exceeded the narrow time limits [6] set by the police, his conviction could not be sustained. Assuming the place of the meeting was appropriate—as appellant justifiably concluded from the official grant of permission—nothing in this courthouse statute, nor in the breach of the peace or obstruction of public passages statutes with their broad sweep and application that we have condemned in No. 24, *ante*, at 16–21, authorizes the police to draw the narrow time line, unrelated to any policy of these statutes, that would be approved if we were to sustain appellant's conviction on this ground. Indeed, the allowance of such unfettered discretion in the police would itself constitute a procedure such as that condemned in No. 24, *ante*, at 16–21. In any event, as we have stated, it is our conclusion from the record that the dispersal order had nothing to do with any time or place limitation, and thus, on this ground alone, it is clear that the dispersal order did not remove the protection accorded appellant by the original grant of permission.

Of course this does not mean that the police cannot call a halt to a meeting which though originally peaceful, becomes violent. Nor does it mean that, under properly drafted and administered statutes and ordinances, the authorities cannot set reasonable time limits for assemblies related to the policies of such laws and then order them dispersed when these time limits are exceeded. See the discussion in No. 24, *ante*, at 16–21. We merely hold that, under circumstances such as those present in this

[6] As we have pointed out in No. 24, *ante*, at 4, n. 2, the evidence is conflicting as to whether appellant and his group were given only a limited time to hold their meeting and whether, if so, such a time limit was exceeded.

case, appellant's conviction cannot be sustained on the basis of the dispersal order.

Nothing we have said here or in No. 24, *ante*, is to be interpreted as sanctioning riotous conduct in any form or demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions.

Liberty can only be exercised in a system of law which safeguards order. We reaffirm the repeated holdings of this Court that our constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest, so important to the preservation of the freedoms treasured in a democratic society. We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under law, and that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations. There is an equally plain requirement for laws and regulations to be drawn so as to give citizens fair warning as to what is illegal; for regulation of conduct that involves freedom of speech and assembly not to be so broad in scope so as to stifle First Amendment freedoms, which "need breathing space to survive," *NAACP* v. *Button*, 371 U. S. 415, 433; for appropriate limitations on the discretion of public officials where speech and assembly are intertwined with regulated conduct; and for all such laws and regulations to be applied with an equal hand. We

believe that all of these requirements can be met in an ordered society dedicated to liberty. We reaffirm our conviction that "[f]reedom and viable government are . . . indivisible concepts." *Gibson* v. *Florida Legislative Comm.*, 372 U. S. 539, 546.

The application of these principles requires us to reverse the judgment of the Supreme Court of Louisiana.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 24.—October Term, 1964.

B. Elton Cox, Appellant, *v.* State of Louisiana.	On Appeal From the Supreme Court of Louisiana.

[January 18, 1965.]

Mr. Justice Goldberg delivered the opinion of the Court.

Appellant, the Reverend Mr. B. Elton Cox, the leader of a civil rights demonstration, was arrested and charged with four offenses under Louisiana law—criminal conspiracy, disturbing the peace, obstructing public passages, and picketing before a courthouse. In a consolidated trial before a judge without a jury, and on the same set of facts, he was acquitted of criminal conspiracy but convicted of the other three offenses. He was sentenced to serve four months in jail and pay a $200 fine for disturbing the peace, to serve five months in jail and pay a $500 fine for obstructing public passages, and to serve one year in jail and pay a $5,000 fine for picketing before a courthouse. The sentences were cumulative.

In accordance with Louisiana procedure, the Louisiana Supreme Court reviewed the "disturbing the peace" and "obstructing public passages" convictions on certiorari, and the "courthouse picketing" conviction on appeal. The Louisiana court, in two judgments, affirmed all three convictions. 244 La. 1087, 156 So. 2d 448; 245 La. 303, 158 So. 2d 172. Appellant filed two separate appeals to this Court from these judgments contending that the three statutes under which he was convicted were unconstitutional on their face and as applied. We noted prob-

able jurisdiction of both appeals, 377 U. S. 921. This case, No. 24, involves the convictions for disturbing the peace and obstructing public passages, and No. 49 concerns the conviction for picketing before a courthouse.

I.

The Facts.

On December 14, 1961, 23 students from Southern University, a Negro college, were arrested in downtown Baton Rouge, Louisiana, for picketing stores that maintained segregated lunch counters. This picketing, urging a boycott of those stores, was part of a general protest movement against racial segregation, directed by the local chapter of the Congress of Racial Equality, a civil rights organization. The appellant, an ordained Congregational minister, the Reverend Mr. B. Elton Cox, a Field Secretary of CORE, was an advisor to this movement. On the evening of December 14, appellant and Ronnie Moore, student president of the local CORE chapter, spoke at a mass meeting at the college. The students resolved to demonstrate the next day in front of the courthouse in protest of segregation and the arrest and imprisonment of the picketers who were being held in the parish jail located on the upper floor of the courthouse building.

The next morning about 2,000 students left the campus, which was located approximately five miles from downtown Baton Rouge. Most of them had to walk into the city since the drivers of their busses were arrested. Moore was also arrested at the entrance to the campus while parked in a car equipped with a loudspeaker, and charged with violation of an antinoise statute. Because Moore was immediately taken off to jail and the vice president of the CORE chapter was already in jail for picketing, Cox felt it his duty to take over the demonstration and see that it was carried out as planned. He

quickly drove to the city "to pick up this leadership and keep things orderly."

When Cox arrived, 1,500 of the 2,000 students were assembling at the site of the Old State Capitol building, two and one-half blocks from the courthouse. Cox walked up and down cautioning the students to keep to one side of the sidewalk while getting ready for their march to the courthouse. The students circled the block in a file two or three abreast occupying about half of the sidewalk. The police had learned of the proposed demonstration the night before from news media and other sources. Captain Font of the City Police Department and Chief Kling of the Sheriff's office, two high-ranking subordinate officials, approached the group and spoke to Cox at the northeast corner of the capitol grounds. Cox identified himself as the group's leader, and, according to Font and Kling, he explained that the students were demonstrating to protest "the illegal arrest of some of their people who were being held in jail." The version of Cox and his witnesses throughout was that they came not "to protest just the arrest but . . . [also] to protest the evil of discrimination." Kling asked Cox to disband the group and "take them back from whence they came." Cox did not acquiesce in this request but told the officers that they would march by the courthouse, say prayers, sing hymns, and conduct a peaceful program of protest. The officer repeated his request to disband, and Cox again refused. Kling and Font then returned to their car in order to report by radio to the Sheriff and Chief of Police who were in the immediate vicinity; while this was going on, the students, led by Cox, began their walk toward the courthouse.

They walked in an orderly and peaceful file, two or three abreast, one block east, stopping on the way for a red traffic light. In the center of this block they were joined by another group of students. The augmented

group now totaling about 2,000 [1] turned the corner and proceeded south, coming to a halt in the next block opposite the courthouse.

As Cox, still at the head of the group, approached the vicinity of the courthouse, he was stopped by Captain Font and Inspector Trigg and brought to Police Chief Wingate White, who was standing in the middle of St. Louis street. The Chief then inquired as to the purpose of the demonstration. Cox, reading from a prepared paper, outlined his program to White, stating that it would include a singing of the Star Spangled Banner and a "freedom song," recitation of the Lord's Prayer and the Pledge of Allegiance, and a short speech. White testified that he told Cox that "he must confine" the demonstration "to the west side of the street." White added, "This, of course, was not—I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision." Cox testified that the officials agreed to permit the meeting. James Erwin, news director of radio station WIBR, a witness for the State, was present and overheard the conversation. He testified that "My understanding was that they would be allowed to demonstrate if they stayed on the west side of the street and stayed within the recognized time," [2] and that this was "agreed to" by White.[3]

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[1] Estimates of the crowd's size varied from 1,500 to 3,800. Two thousand seems to have been the general consensus and was the figure accepted by the Louisiana Supreme Court, 244 La., at 1095, 156 So. 2d, at 451.

[2] There were varying versions in the record as to the time the demonstration would take. The State's version was that Cox asked for seven minutes. Cox's version was that he said his speech would take seven minutes but that the whole program would take between 17 and 25 minutes.

[3] The "permission" granted the students to demonstrate is discussed at greater length in No. 49, where its legal effect is considered.

The students were then directed by Cox to the west sidewalk, across the street from the courthouse, 101 feet from its steps. They were lined up on this sidewalk about five deep and spread almost the entire length of the block. The group did not obstruct the street. It was close to noon and, being lunch time, a small crowd of 100 to 300 curious white people, mostly courthouse personnel, gathered on the east sidewalk and courthouse steps, about 100 feet from the demonstrators. Seventy-five to eighty policemen, including city and state patrolmen and members of the Sheriff's staff, as well as members of the fire department and a fire truck were stationed in the street between the two groups. Rain fell throughout the demonstration.

Several of the students took from beneath their coats picket signs similar to those which had been used the day before. These signs bore legends such as "Don't buy discrimination for Christmas," "Sacrifice for Christ, don't buy," and named stores which were proclaimed "unfair." They then sang "God Bless America," pledged allegiance to the flag, prayed briefly, and sang one or two hymns, including "We Shall Overcome." The 23 students, who were locked in jail cells in the courthouse building out of the sight of the demonstrators, responded by themselves singing; this in turn was greeted with cheers and applause by the demonstrators. Appellant gave a speech, described by a State's witness as follows:

> "He said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and he said that they were not going to commit any violence,[4] that if

[4] A few days before, Cox had participated with some of the demonstrators in a "direct non-violent clinic" sponsored by CORE and held at St. Mark's church.

anyone spit on them, they would not spit back on the person that did it." [5]

Cox then said:

"All right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters; they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the state." [6]

In apparent reaction to these last remarks, there was what state witnesses described as "muttering" and "grumbling" by the white onlookers.[7]

The Sheriff, deeming, as he testified, Cox's appeal to the students to sit in at the lunch counters to be "inflam-

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[5] Sheriff Clemens had no objection to this part of the speech. He testified on cross-examination as follows:

"Q. Did you have any objection to that part of his talk?

"A. None whatever. If you would have done what he said, there would have been no trouble at all. The whole thing would have been over and done with.

"Q. Did you have any objection to them being assembled on that side of the street while he was making that speech, sir?

" A. I had no objection to it."

[6] Sheriff Clemens objected strongly to these words. He testified on cross-examination as follows:

"Q. Now, what part of his speech became objectionable to him being assembled there?

"A. The inflammatory manner in which he addressed that crowd and told them to go on up town, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour.

[7] The exact sequence of these events is unclear from the record, being described differently not only by the State and the defense, but also by the state witnesses themselves. It seems reasonably certain, however, that the response to the singing from the jail, the end of Cox's speech, and the "muttering" and "grumbling" of the white onlookers all took place at approximately the same time.

matory," then took a power microphone and said, "Now, you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has to be broken up immediately." The testimony as to what then happened is disputed. Some of the State's witnesses testified that Cox said, "don't move"; others stated that he made a "gesture of defiance." It is clear from the record, however, that Cox and the demonstrators did not then and there break up the demonstration. Two of the Sheriff's deputies immediately started across the street and told the group, "You have heard what the Sheriff said, now, do what he said." A state witness testified that they put their hands on the shoulders of some of the students "as though to shove them away."

Almost immediately thereafter—within a time estimated variously at two to five minutes—one of the policemen exploded a tear gas shell at the crowd. This was followed by several other shells. The demonstrators quickly dispersed, running back towards the State Capitol and the downtown area; Cox tried to calm them as they ran and was himself one of the last to leave.

No Negroes participating in the demonstration were arrested on that day. The only person then arrested was a young white man, not a part of the demonstration, who was arrested "because he was causing a disturbance." The next day appellant was arrested and charged with the four offenses above described.

II.

The Breach of the Peace Conviction.

Appellant was convicted of violating a Louisiana "disturbing the peace" statute, which provides:

> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of

> the peace may be occasioned thereby . . . crowds or congregates with others . . . in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on, . . . when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person . . . shall be guilty of disturbing the peace." La. Rev. Stat. 14:103.1 (Cum. Supp. 1962).

It is clear to us that on the facts of this case, which are strikingly similar to those present in *Edwards* v. *South Carolina*, 372 U. S. 229, and *Fields* v. *South Carolina*, 375 U. S. 44, Louisiana infringed appellant's rights of free speech and free assembly by convicting him under this statute. As in *Edwards*, we do not find it necessary to pass upon appellant's contention that there was a complete absence of evidence so that his conviction deprived him of liberty without due process of law. Cf. *Thompson* v. *Louisville*, 362 U. S. 199. We hold that Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals, and also that the statute as authoritatively interpreted by the Louisiana Supreme Court is unconstitutionally broad in scope.

The Louisiana courts have held that appellant's conduct constituted a breach of the peace under state law, and as in *Edwards*, "we may accept their decision as binding upon us to that extent," *Edwards* v. *South Carolina*, *supra*, at 235; but our independent examination of the record, which we are required to make,[8]

[8] Because a claim of constitutionally protected right is involved, it "remains our duty in a case such as this to make an independent examination of the whole record." *Edwards* v. *South Carolina*, *supra*; *Blackburn* v. *Alabama*, 361 U. S. 199, 205, n. 5; *Pennekamp*

shows no conduct which the State had a right to prohibit as a breach of the peace.

Appellant led a group of young college students who wished "to protest segregation" and discrimination against Negroes and the arrest of 23 fellow students. They assembled peaceably at the State Capitol building and marched to the courthouse where they sang, prayed and listened to a speech. A reading of the record reveals agreement on the part of the State's witnesses that Cox had the demonstration "very well controlled," and until the end of Cox's speech, the group was perfectly "orderly." Sheriff Clemens testified that the crowd's activities were not "objectionable" before that time. They became objectionable, according to the Sheriff himself, when Cox, concluding his speech, urged the students to go downtown and sit in at lunch counters. The Sheriff testified that the sole aspect of the program to which he objected was "the inflammatory manner in which he [Cox] addressed the crowd and told them to go on uptown, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour." Yet this part of Cox's speech obviously did not deprive the demonstration of its protected character under the Constitution as free speech and assembly. See *Edwards* v. *South Carolina*, *supra*; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Thornhill* v. *Alabama*, 310 U. S. 88; *Garner* v. *Louisiana*, 368 U. S. 157, 185 (concurring opinion of MR. JUSTICE HARLAN).

The State argues, however, that while the demonstrators started out to be orderly, the loud cheering and

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v. *Florida*, 328 U. S. 331, 335; *Fiske* v. *Kansas*, 274 U. S. 380, 385–386. In the area of First Amendment freedoms as well as areas involving other constitutionally protected rights, "we cannot avoid our responsibilities by permitting ourselves to be 'completely bound by state court determination of any issue essential to decision of a claim of federal right, else federal law could be frustrated by distorted fact finding.'" *Haynes* v. *Washington*, 373 U. S. 503, 515–516; *Stern* v. *New York*, 346 U. S. 156, 181.

clapping by the students in response to the singing from the jail converted the peaceful assembly into a riotous one.[9] The record, however, does not support this assertion. It is true that the students, in response to the singing of their fellows who were in custody, cheered and applauded. However, the meeting was an outdoor meeting and a key state witness testified that while the singing was loud, it was not disorderly. There is, moreover, no indication that the mood of the students was ever hostile, aggressive, or unfriendly. Our conclusion that the entire meeting from the beginning until its dispersal by tear gas was orderly [10] and not riotous is confirmed by.

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[9] This cheer and shout was described differently by different witnesses, but the most extravagant descriptions were the following: "a jumbled roar like people cheering at a football game," "loud cheering and spontaneous clapping and screaming and a great hullabaloo," "a great outburst," a cheer of "conquest . . . much wilder than a football game," "a loud reaction, not disorderly, loud," "a shout, a roar," and an emotional response "in jubilation and exhortation." Appellant agreed that some of the group "became emotional" and "tears flowed from young ladies' eyes."

[10] There is much testimony that the demonstrators were well controlled and basically orderly throughout. G. Dupre Litton, an attorney and witness for the State, testified, "I would say that it was an orderly demonstration. It was too large a group, in my opinion, to congregate at that place at that particular time, which is nothing but my opinion . . . but generally, . . . it was orderly." Robert Durham, a news photographer for WRBZ, a state witness, testified that although the demonstration was not "quiet and peaceful," it was basically "orderly." James Erwin, news director of WIBR, a witness for the State, testified as follows:

"Q. Was the demonstration generally orderly?

"A. Yes, Reverend Cox had it very well controlled."

On the other hand, there is some evidence to the contrary: Erwin also stated:

"Q. Was it orderly up to the point of throwing the tear gas?

"A. No, there was one minor outburst after he called for the sitins, and then a minor reaction, and then a loud reaction, not dis-

a film of the events taken by a television news photographer, which was offered in evidence as a state exhibit. We have viewed the film, and it reveals that the students, though they undoubtedly cheered and clapped, were well-behaved throughout. My Brother BLACK, concurring in this opinion and dissenting in No. 49, *post*, agrees "that the record does not show boisterous or violent conduct or indecent language on the part of the . . ." students. *Post*, at p. 9. The singing and cheering does not seem to us to differ significantly from the constitutionally protected activity of the demonstrators in *Edwards*,[11] who loudly sang "while stamping their feet and clapping their hands." *Edwards* v. *South Carolina*, *supra*, at 233.[12]

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orderly, loud . . . . A loud reaction when the singing occurred upstairs."

And James Dumigan, a police officer, thought that the demonstrators showed a certain disorder "by hollering loud, clapping their hands." But this latter evidence is surely not sufficient, particularly in face of the film, to lead us to conclude that the cheering was so disorderly as to be beyond that held constitutionally protected in *Edwards* v. *South Carolina*, *supra*.

[11] Moreover, there are not significantly more demonstrators here than in *Fields* v. *South Carolina*, *supra*, at 44, which involved more than 1,000 students.

[12] Witnesses who concluded that a breach of the peace was threatened or had occurred based their conclusions, not upon the shouting or cheering, but upon the fact that the group was demonstrating at all, upon Cox's suggestion that the group sit-in, or upon the reaction of the white onlookers across the street. Rush Biossat, a state witness, testified that while appellant "didn't say anything of a violent nature," there was "emotional upset," "a feeling of disturbance in the air," and "agitation"; he thought, however, that all this was caused by Cox's remarks about "black and white together." James Erwin, a state witness, and news director of WIBR, testified that there was "considerable stirring" and a "restiveness," but among the white group. He also stated that the reaction of the white group to Cox's speech "was electrifying." "You could hear grumbling from the small group of white people, some total of two hundred fifty, perhaps . . . and there was a definite feeling of

Our conclusion that the record does not support the contention that the students' cheering, clapping and singing constituted a breach of the peace is confirmed by the fact that these were not relied on as a basis for convic-

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ill will that had sprung up." He was afraid that "violence was about to erupt" but also thought that Cox had his group under control and did not want violence. G. L. Johnston, a police officer and a witness for the State, felt that the disorderly part of the demonstration was Cox's suggestion that the group sit-in. Vay Carpenter, and Mary O'Brien, legal secretaries and witnesses for the State, thought that the mood of the crowd changed at the time of Cox's speech and became "tense." They thought this was because of the sit-in suggestion. Chief Kling of the Sheriff's office, testifying for the State, said that the situation became one "that was explosive and one that had gotten to the point where it had to be handled or it would have gotten out of hand"; however, he based his opinion upon "the mere presence of these people in downtown Baton Rouge in such great numbers." Police Captain Font also testified for the State that the situation was "explosive"; he based this opinion on, "how they came, such a large group like that, just coming out of nowhere, just coming, filling the streets, filling the sidewalks. We are prepared—we have traffic officers. We can handle traffic situations if we are advised that we are going to have a traffic situation, if the sidewalk is going to be blocked, if the street is going to be blocked, but we wasn't advised of it. They just came and blocked it." He added that he feared "bloodshed," but based this fear upon "when the Sheriff requested them to move, they didn't move; when they cheered in a conquest type of tone, their displaying of the signs, the deliberate agitation that 25 people had been arrested the day before, and then they turned right around and just agitated the next day in the same prescribed manner." He also felt that the students displayed their signs in a way which was "agitating." Inspector Trigg testified for the State that "from their actions, I figured they were going to try to storm the courthouse and take over the jail and try to get the prisoners that they had come down here to protest." However, Trigg based his conclusions upon the students having marched down from the capitol and paraded in front of the courthouse; he thought they were "violent" because "they continued to march around this courthouse, and they continued to march down here and do thing that disrupts our way of living down here." Sheriff Clemens testified that the assembly "became

tion by the trial judge, who, rather, stated as his reason for convicting Cox of disturbing the peace that "[i]t must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as 'black and white together,' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so."

Finally, the State contends that the conviction should be sustained because of fear expressed by some of the state witnesses that "violence was about to erupt" because of the demonstration. It is virtually undisputed, however, that the students themselves were not violent and threatened no violence. The fear of violence seems to have been based upon the reaction of the group of white citizens looking on from across the street. One state witness testified that "he felt the situation was getting out of hand" as on the courthouse side of St. Louis street "were small knots or groups of white citizens who were muttering words, who seemed a little bit agitated."

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objectionable" at the time of Cox's speech. The Sheriff objected to "the inflammatory manner in which he addressed that crowd and told them to go on up town, go to four places on the protest list, sit down and if they don't feed you, sit there for one hour. Prior to that though, out from under these coats, some signs of—picketing signs. I don't know what's coming out of there next. It could be anything under a coat. It became inflammatory, and when he gestured, go on up town and take charge of these places of business. That is what they were trying to do is take charge of this courthouse."

A close reading of the record seems to reveal next to no evidence that anyone thought that the shouting and cheering was what constituted the threatened breach of the peace.

A police officer stated that the reaction of the white crowd was not violent, but "was rumblings." Others felt the atmosphere became "tense" because of "mutterings," "grumbling," and "jeering" from the white group. There is no indication, however, that any member of the white group threatened violence. And, this small crowd estimated at between 100 and 300 was separated from the students by "seventy-five to eighty" armed policemen, including "every available shift of the City Police," the "Sheriff's Office in full complement," and "additional help from the State Police," along with a "fire truck and the Fire Department." As Inspector Trigg testified, they could have handled the crowd.

This situation, like that in *Edwards,* is "a far cry from the situation in *Feiner* v. *New York,* 340 U. S. 315." See *Edwards* v. *South Carolina, supra,* at 236. Nor is there any evidence here of "fighting words." See *Chaplinsky* v. *New Hampshire,* 315 U. S. 568. Here again, as in *Edwards,* this evidence "showed no more than that the opinions which . . . [the students] were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." *Edwards* v. *South Carolina, supra,* at 237. Conceding this was so, the "compelling answer . . . is that constitutional rights may not be denied simply because of hostility to their assertion or exercise." *Watson* v. *Memphis,* 373 U. S. 526, 535.

There is an additional reason why this conviction cannot be sustained. The statute at issue in this case, as authoritatively interpreted by the Louisiana Supreme Court, is unconstitutionally vague in its overly broad scope. The statutory crime consists of two elements: (1) congregating with others "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned," and (2) a refusal to move on after having been ordered to do so by a law

enforcement officer. While the second part of this offense is narrow and specific, the first element is not. The Louisiana Supreme Court in this case defined the term "breach of the peace" as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." 244 La., at 1105; 156 So. 2d, at 455. In *Edwards*, defendants had been convicted of a common-law crime similarly defined by the South Carolina Supreme Court. Both definitions would allow persons to be punished merely for peacefully expressing unpopular views. Yet, a "function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudice and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment. . . . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political groups." *Terminiello* v. *Chicago*, 337 U. S. 1, 4–5. In *Terminiello* convictions were not allowed to stand because the trial judge charged that speech of the defendants could be punished as a breach of the peace " 'if it stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm.' " *Id.*, at 3. The Louisiana statute, as interpreted by the Louisiana court, is at least as likely to allow conviction for innocent speech as was the charge of the trial judge in *Terminiello*. Therefore, as in *Terminiello* and *Edwards* the conviction under this statute must be reversed as the statute is unconstitutional in that it sweeps within its broad scope activities that are consti-

tutionally protected free speech and assembly. Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. As Chief Justice Hughes stated in *Stromberg* v. *California*, 283 U. S. 359, 369: "A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

For all these reasons we hold that appellant's freedom of speech and assembly, secured to him by the First Amendment as applied to the States, by the Fourteenth Amendment, were denied by his conviction for disturbing the peace. The conviction on this charge cannot stand.

III.

The Obstructing Public Passages Conviction.

We now turn to the issue of the validity of appellant's conviction for violating the Louisiana statute, La. Rev. Stat. 14:100.1 (Cum. Supp. 1962), which provides:

> *"Obstructing Public Passages*
>
> "No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> "Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions."

Appellant was convicted under this statute, not for leading the march to the vicinity of the courthouse, which the Louisiana Supreme Court stated to have been "orderly," 244 La., at 1096, 156 So. 2d, at 451, but for leading the meeting on the sidewalk across the street from the courthouse. *Id.*, at 1094, 1106–1107, 156 So. 2d, at 451, 455. In upholding appellant's conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute.

Appellant, however, contends that as so construed and applied in this case, the statute is an unconstitutional infringement on freedom of speech and assembly. This contention on the facts here presented raises an issue with which this Court has dealt in many decisions. That is, the right of a State or municipality to regulate the use of city streets and other facilities to assure the safety and convenience of the people in their use and the concomitant right of the people of free speech and assembly. See *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *CIO*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147; *Thornhill* v. *Alabama*, 310 U. S. 88; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Cox* v. *New Hampshire*, 312 U. S. 569; *Largent* v. *Texas*, 318 U. S. 418; *Saia* v. *New York*, 334 U. S. 558; *Kovacs* v. *Cooper*, 336 U. S. 77; *Niemotko* v. *Maryland*, 340 U. S. 268; *Kunz* v. *New York*, 340 U. S. 290; *Poulos* v. *New Hampshire*, 345 U. S. 395.

From these decisions certain clear principles emerge. The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The consti-

tutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations. See *Lovell* v. *Griffin, supra,* at 451; *Cox* v. *New Hampshire, supra,* at 574; *Schneider v. State, supra,* at 160–161; *Cantwell* v. *Connecticut,* supra, at 306–307; *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490; *Poulos* v. *New Hampshire, supra* at 405–408; see also, *Edwards* v. *South Carolina, supra,* at 236.

We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech. See the discussion and cases cited in No. 49, *post,* at 4. We reaffirm the statement of the Court in *Giboney* v. *Empire Storage & Ice Co., supra,* at 502, that "it has never been

deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."

We have no occasion in this case to consider the constitutionality of the uniform, consistent, and nondiscriminatory application of a statute forbidding all access to streets and other public facilities for parades and meetings.[13] Although the statute here involved on its face precludes all street assemblies and parades,[14] it has not been so applied and enforced by the Baton Rouge authorities. City officials who testified for the State clearly indicated that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior approval is obtained. This was confirmed in oral argument before this Court by counsel for the State. He stated that parades and meetings are permitted, based on "arrangements . . . made with officials." The statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit. Nor are there any administrative regulations on this sub-

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[13] It has been argued that, in the exercise of its regulatory power over streets and other public facilities, a State or municipality could reserve the streets completely for traffic and other facilities for rest and relaxation of the citizenry. See *Kovacs* v. *Cooper*, *supra*, at 98 (opinion of Mr. Justice Jackson); *Kunz* v. *New York*, *supra*, at 298 (Mr. Justice Jackson, dissenting). The contrary, however, has been indicated, at least to the point that some open area must be preserved for outdoor assemblies. See *Hague* v. *CIO*, *supra*, at 515–516 (opinion of Mr. Justice Roberts); *Kunz* v. *New York*, *supra*, at 293; *Niemotko* v. *Maryland*, *supra*, at 283 (Mr. Justice Frankfurter, concurring). See generally, *Poulos* v. *New Hampshire*, *supra*, at 403; *Niemotko* v. *Maryland*, *supra*, at 272–273.

[14] With the express exception, of course, of labor picketing. This exception points up the fact that the statute reaches beyond mere traffic regulation to restrictions on expression.

ject which have been called to our attention.[15] From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion.

The situation is thus the same as if the statute itself expressly provided that there could only be peaceful parades or demonstrations in the unbridled discretion of the local officials. The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective that a statute expressly permitting such selective enforcement. A long line of cases in this Court make it clear that a State or municipality cannot "require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be . . . disseminate[d] . . . ." *Schneider* v. *State*, *supra*, at 164. See *Lovell* v. *Griffin*, *supra*; *Hague* v. *CIO*, *supra*; *Largent* v. *Texas*, *supra*; *Saia* v. *New York*, *supra*; *Niemotko* v. *Maryland*, *supra*; *Kunz* v. *New York*, *supra*.

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[15] Although cited by neither party, research has disclosed the existence of a local ordinance of Baton Rouge, Baton Rouge City Code, Tit. 11, § 210 (1957), which prohibits "parades . . . along any street except in accordance with a permit issued by the chief of police . . . ." A similar ordinance was in existence in *Fields* v. *South Carolina*, *supra*. As in *Fields*, this ordinance is irrelevant to the conviction in this case as not only was appellant not charged with its violation, but the existence of the ordinance was never referred to by the State in any of the courts involved in the case, including this one, and neither the Louisiana trial court or Supreme Court relied on the ordinance in sustaining appellant's convictions under the three statutes here involved. Moreover, since the ordinance apparently sets forth no standards for the determination of the chief of police as to which parades to permit or which to prohibit, obvious constitutional problems would arise if appellant had been convicted for parading in violation of it. See the discussion in text above; *Lovell* v. *Griffin*, *supra*, at 452–453; *Hague* v. *CIO*, *supra*, at 518; *Saia* v. *New York*, *supra*, at 559–560.

This Court has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor. See *Saia* v. *New York*, *supra*, at 562. Also inherent in such a system allowing parades or meetings only with the prior permission of an official is the obvious danger to the right of a person or group not to be denied equal protection of the laws. See *Niemotko* v. *Maryland*, *supra*, at 272, 284; cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356. It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute.

It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination' . . . [and with] a 'systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways . . . .'" *Cox* v. *New Hampshire*, *supra*, at 576. See *Poulos* v. *New Hampshire*, *supra*.

But here it is clear that the practice in Baton Rouge allowing unfettered discretion in local officials in the regulation of the use of the streets for peaceful parades and meetings is an unwarranted abridgment of appellant's freedom of speech and assembly secured to him by the

First Amendment, as applied to the States by the Fourteenth Amendment. It follows, therefore, that appellant's conviction for violating the statute as so applied and enforced must be reversed.

For the reasons discussed above the judgment of the Supreme Court of Louisiana is reversed.

Reversed.

SUPREME COURT OF THE UNITED STATES

Nos. 24 and 49.—October Term, 1964.

B. Elton Cox, Appellant, 24 *v.* State of Louisiana. B. Elton Cox, Appellant, 49 *v.* State of Louisiana.	On Appeals From the Supreme Court of Louisiana.

[January 18, 1965.]

Mr. Justice Black, concurring in No. 24 and dissenting in No. 49.

I concur in the Court's judgment reversing appellant Cox's conviction for violation of the Louisiana statutes prohibiting breach of the peace and obstructing public passages, but I do so for reasons which differ somewhat from those stated in the Court's opinion. I therefore deem it appropriate to state separately my reasons for voting to hold both these statutes unconstitutional and to reverse the convictions under them. On the other hand, I have no doubt that the State has power to protect judges, jurors, witnesses, and court officers from intimidation by crowds which seek to influence them by picketing, patrolling, or parading in or near the courthouses in which they do their business or the homes in which they live, and I therefore believe that the Louisiana statute which protects the administration of justice by forbidding such interferences is constitutional, both as written and as applied. Since I believe that the evidence showed practically without dispute that appellant violated this statute, I think this conviction should be affirmed.

There was ample evidence for the jury to have found the following to be the facts: On December 14, 1961, 23 persons were arrested and put in jail on a charge of

illegal picketing. That night appellant Cox and others made plans to carry on a "demonstration," that is, a parade and march, through parts of Baton Rouge, ending at the courthouse. Their purpose was to "protest" against what they called the "illegal arrest" of the 23 picketers. They neither sought nor obtained any permit for such a use of the streets. The next morning, December 15, the plan was carried out. Some 2,000 protesters marched to a point 101 feet across the street from the courthouse, which also contained the jail. State and county police officers, for reasons as to which there was a conflict in the evidence from which different inferences could be drawn, agreed that the picketers might stay there for a few minutes. The group sang songs along with the prisoners in the jail and did other things set out in the Court's opinion. Later state and county officials told Cox, the group's leader, that the crowd had to "move on." Cox told his followers to stay where they were and they did. Officers then used tear gas and the picketers ran away. Cox was later arrested.

I. The Breach-of-Peace Conviction.

I agree with that part of the Court's opinion holding that the Louisiana breach-of-the-peace statute [1] on its face

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[1] La. Rev. Stat. § 14.103.1 (Cum. Supp. 1962) provides in relevant part:

"Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon . . . a public street or public highway, or upon a public sidewalk, or any other public place or building . . . and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do

and as construed by the State Supreme Court is so broad as to be unconstitutionally vague under the First and Fourteenth Amendments. See *Winters* v. *New York*, 333 U. S. 507, 509–510. The statute does not itself define the conditions upon which people who want to express views may be allowed to use the public streets and highways, but leaves this to be defined by law enforcement officers. The statute therefore neither forbids all crowds to congregate and picket on streets, nor is it narrowly drawn to prohibit congregating or patrolling under certain clearly defined conditions while preserving the freedom to speak of those who are using the streets as streets in the ordinary way that the State permits. A state statute of either of the two types just mentioned, regulating *conduct*—patrolling and marching—as distinguished from *speech*, would in my judgment be constitutional, subject only to the condition that if such a law had the effect of indirectly impinging on freedom of speech, press, or religion, it would be unconstitutional if under the circumstances it appeared that the State's interest in suppressing the conduct was not sufficient to outweigh the individual's interest in engaging in conduct closely involving his First Amendment freedoms. As this Court held in *Schneider* v. *State*, 308 U. S. 147, 161:

> Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the cir-

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by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person . . . shall be guilty of disturbing the peace. . . ."

> cumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.

See also, *e. g., Brotherhood of R. Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U. S. 1; *NAACP* v. *Button*, 371 U. S. 415; *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449; *Martin* v. *City of Struthers*, 319 U. S. 141; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Grosjean* v. *American Press Co.*, 297 U. S. 233. As I discussed at length in my dissenting opinion in *Barenblatt* v. *United States*, 360 U. S. 109, 141–142, when passing on the validity of a regulation of conduct, which may *indirectly* infringe on free speech, this Court does, and I agree that it should, "weigh the circumstances" in order to protect, not to destroy, freedom of speech, press, and religion.

The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly *where people have a right to be for such purposes*. This does not mean, however, that these amendments also grant a constitutional right to engage in the conduct of picketing or patrolling, whether on publicly owned streets or on privately owned property. See *Labor Board* v. *Fruit & Vegetable Packers & Warehousemen*, 377 U. S. 58, 76 (concurring opinion). Were the law otherwise, people on the streets, in their homes and anywhere else could be compelled to listen against their will to speakers they did not want to hear. Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment. *Hughes* v. *Superior Court*, 339 U. S. 460, 464–466; *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; *Bakery & Pastry Drivers & Helpers* v. *Wohl*, 315 U. S. 769, 775–777 (DOUGLAS, J., concurring).

However, because Louisiana's breach-of-peace statute is not narrowly drawn to assure nondiscriminatory application, I think it is constitutionally invalid under our holding in *Edwards* v. *South Carolina*, 372 U. S. 229. See also *Musse* v. *Utah*, 333 U. S. 95, 96–97. *Edwards*, however, as I understand it, did not hold that either private property owners or the States are constitutionally required to supply a place for people to exercise freedom of speech or assembly. See *Bell* v. *Maryland*, 378 U. S. 226, 344–346 (dissenting opinion). What *Edwards* as I read it did hold, and correctly I think, was not that the Federal Constitution prohibited South Carolina from making it unlawful for people to congregate, picket, and parade on or near that State's capitol grounds, but rather that in the absence of a clear, narrowly drawn, nondiscriminatory statute prohibiting such gatherings and picketing, South Carolina could not punish people for assembling at the capitol to petition for redress of grievances. In the case before us Louisiana has by a broad, vague statute given policemen an unlimited power to order people off the streets, not to enforce a specific, nondiscriminatory state statute forbidding patrolling and picketing, but rather whenever a policeman makes a decision on his own personal judgment that views being expressed on the street are provoking or might provoke a breach of the peace. Such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat. Compare *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369–370. This kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree. See *Feiner* v. *New York*, 340 U. S. 315, 321 (dissenting opinion); cf. *Peters* v. *Hobby*, 349 U. S. 331, 349–350 (concurring opinion); *Barsky* v. *Board of Regents*, 347 U. S. 442, 463–464 (dissenting

opinion); *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206, 217–218 (dissenting opinion); *Ludecke* v. *Watkins*, 335 U. S. 160, 173 (dissenting opinion). In this situation I think *Edwards* v. *South Carolina* and other such cases invalidating statutes for vagueness are controlling. Moreover, because the statute makes an exception for labor organizations and therefore tries to limit access to the streets to some views but not others, I believe it is unconstitutional for the reasons discussed in Part II of this opinion, dealing with the street-obstruction statute, *infra*. For all the reasons stated I concur in reversing the conviction based on the breach-of-peace statute.

II. The Obstructing-Public-Passages Conviction.

The Louisiana law against obstructing the streets and sidewalks,[2] while applied here so as to convict Negroes for assembling and picketing on streets and sidewalks for the purpose of publicly protesting racial discrimination, expressly provides that the statute shall not bar picketing and assembly by labor unions protesting unfair treatment of union members. I believe that the First and Fourteenth Amendments require that if the streets of a town are open to some views, they must be open

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[2] La. Rev. Stat. § 14:100.1 (Cum. Supp. 1962) provides in relevant part:

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

"Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. . . ."

to all. It is worth noting in passing that the objections of labor unions and of the group led by Cox here may have much in common. Both frequently protest discrimination against their members in the matter of employment. Compare *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, 561. This Louisiana law opens the streets for union assembly, picketing, and public advocacy, while denying that opportunity to groups protesting against racial discrimination. As I said above, I have no doubt about the general power of Louisiana to bar all picketing on its streets and highways. Standing, patrolling, or marching back and forth on streets is conduct, not speech, and as conduct can be regulated or prohibited. But by specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest people it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, unconstitutional under the Frist and Fourteenth Amendments. And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allowing other groups to use the streets to voice opinions on other subjects, also amounts, I think, to an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment.[3] Moreover, as the Court points out, city officials despite this statute apparently have permitted favored groups other than labor unions to block the streets with their gatherings. For these reasons I concur in reversing the conviction based on this law.

[3] It is of interest that appellant Cox, according to a state witness, said this about the reason his group picketed the courthouse: "[H]e said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket and that they should have the right to picket . . . ."

III. The Conviction for Picketing Near a Courthouse.

I would sustain the conviction of appellant for violation of Louisiana's R. S. § 14:401 (Cum. Supp. 1962), which makes it an offense for anyone, under any conditions, to picket or parade near a courthouse, residence or other building used by a judge, juror, witness, or court officer, "with the intent of influencing" any of them.[4] Certainly the record shows beyond all doubt that the purpose of the 2,000 or more people who stood right across the street from the courthouse and jail was to protest the arrest of members of their group who were then in jail. As the Court's opinion states, appellant Cox so testified. Certainly the most obvious reason for their protest at the courthouse was to influence the judge and other court officials who used the courthouse and performed their official duties there. The Court attempts to support its holding by its inference that the Chief of Police gave his consent to picketing the courthouse. But quite apart from the fact that a police chief cannot authorize violations of his State's criminal laws,[5] there was strong, emphatic testimony that if any consent was given it was limited to tell-

[4] La. Rev. Stat. § 14:401 (Cum. Supp. 1962) provides in relevant part:

"Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty pickets or parades in or near a building housing a court of the State of Louisiana, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more that five thousand dollars or imprisoned not more than one year, or both. . . ."

[5] Cf. *United States* v. *Philadelphia National Bank*, 374 U. S. 321, 350–352; *California* v. *Federal Power Comm'n*, 369 U. S. 482, 484–485; *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 225–227.

ing Cox and his groups to come no closer to the courthouse than they had already come without the consent of any official, city, state, or federal. And there was also testimony that when told to leave appellant Cox defied the order by telling the crowd not to move. I fail to understand how the Court can justify the reversal of these convictions because of a permission which testimony in the record denies was given, which could not have been authoritatively given anyway, and which even if given was soon afterwards revoked. While I agree that the record does not show boisterous or violent conduct or indecent language on the part of the "demonstrators," the ample evidence that this group planned the march on the courthouse and carried it out for the express purpose of influencing the courthouse officials in the performance of their official duties brings this case squarely within the prohibitions of the Louisiana statute and I think leaves us with no alternative but to sustain the conviction unless the statute itself is unconstitutional, and I do not believe that this statute is unconstitutional, either on its face or as applied.

This statute, like the federal one which it closely resembles,[6] was enacted to protect courts and court officials from the intimidation and dangers that inhere in huge gatherings at courthouse doors and jail doors to protest arrests and to influence court officials in performing their duties. The very purpose of a court system is to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures. Justice cannot be rightly administered, nor are the lives and safety of prisoners secure, where throngs of people clamor against the processes of justice right outside the courthouse or jailhouse doors. The streets are not now and never have been the proper place to adminis-

[6] 18 U. S. C. § 1507 (1958 ed.).

ter justice. Use of the streets for such purposes has always proved disastrous to individual liberty in the long run, whatever fleeting benefits may have appeared to have been achieved. And minority groups, I venture to suggest, are the ones who always have suffered and always will suffer most when street multitudes are allowed to substitute their pressures for the less glamorous but more dependable and temperate processes of the law. Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind-spirited multitude of today, to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends.

Minority groups in particular need always to bear in mind that the Constitution, while it requires States to treat all citizens equally and protect them in the exercise of rights granted by the Federal Constitution and laws, does not take away the State's power, indeed its duty, to keep order and to do justice according to law. Those who encourage minority groups to believe that the United States Constitution and federal laws give them a right to patrol and picket in the streets whenever they choose, in order to advance what they think to be a just and noble end, do no service to those minority groups, their cause, or their country. I am confident from this record that this appellant violated the Louisiana statute because of a mistaken belief that he and his followers had a constitutional right to do so, because of what they believed were just grievances. But the history of the past 25 years if it shows nothing else shows that his group's constitutional and statutory rights have to be protected by the courts, which must be kept free from intimidation and coercive pressures of any kind. Government under law as ordained by our Constitution is too precious, too

sacred, to be jeopardized by subjecting the courts to intimidatory practices that have been fatal to individual liberty and minority rights wherever and whenever such practices have been allowed to poison the streams of justice. I would be wholly unwilling to join in moving this country a single step in that direction.

SUPREME COURT OF THE UNITED STATES

Nos. 24 AND 49.—OCTOBER TERM, 1964.

B. Elton Cox, Appellant, 24 *v.* State of Louisiana. B. Elton Cox, Appellant, 49 *v.* State of Louisiana.	On Appeals From the Supreme Court of Louisiana.

[January 18, 1965.]

MR. JUSTICE CLARK, concurring in No. 24 and dissenting in No. 49.

According to the record, the opinions of all of Louisiana's courts and even the majority opinion of this Court, the appellant, in an effort to influence and intimidate the courts and legal officials of Baton Rouge and procure the release of 23 prisoners being held for trial, agitated and led a mob of over 2,000 students in the staging of a modern Donnybrook Fair across from the courthouse and jail. He preferred to resolve the controversy in the streets rather than submit the question to the normal judicial procedures by contacting the judge and attempting to secure bail and an early trial for the prisoners.

Louisiana's statute, § 14:401, under attack here, was taken *in haec verba* from 18 U. S. C. § 1507. The federal statute was enacted by the Congress in 1949 to protect federal courts from demonstrations similar to the one involved in this case. It applies to the Supreme Court Building where this Court sits. I understand that § 1507 was written by members of this Court after disturbances similar to the one here occurred at buildings housing federal courts. Naturally, the Court could hardly be expected to hold its progeny invalid either on the ground

that the use in the statute of the phrase "in or near a building housing a court" was vague or that it violated free speech or assembly. It has been said that an author is always pleased with his own work.

But the Court excuses Cox's brazen defiance of the statute—the validity of which the Court upholds—on a much more subtle ground. It seizes upon the acquiescence of the Chief of Police arising from the laudable motive to avoid violence and possible bloodshed to find that he made an on-the-spot administrative determination that a demonstration confined to the west side of St. Louis Street—101 feet from the courthouse steps—would not be "near" enough to the court building to violate the statute. It then holds that the arrest and conviction of appellant for demonstrating there constitutes an "indefensible sort of entrapment," citing *Raley* v. *Ohio*, 360 U. S. 423 (1959).

With due deference, the record will not support this novel theory. Nor is *Raley* apposite. This mob of young Negroes led by Cox—2,000 strong—was not only within sight but in hearing distance of the courthouse. The record is replete with evidence that the demonstrators with their singing, cheering, clapping and waving of banners drew the attention of the whole courthouse square as well as the occupants and officials of the court building itself. Indeed, one judge was obliged to leave the building. The 23 students who had been arrested for sit-in demonstrations the night before and who were in custody in the building were also aroused to such an extent that they sang and cheered to the demonstrators from the jail which was in the courthouse and the demonstrators returned the notice with like activity. The law enforcement officials were confronted with a direct obstruction to the orderly administration of their duties as well as an interference with the courts. One hardly needed an on-the-spot administrative decision that the

demonstration was "near" the courthouse with the disturbance being conducted before the eyes and ringing in the ears of court officials, police officers and citizens throughout the courthouse.

Moreover, the Chief testified that when Cox and the 2,000 Negroes approached him on the way to the courthouse that he was faced with a "situation that was accomplished." From the beginning they had been told not to proceed with their march; twice officers had requested them to turn back to the school; on each occasion they had refused. Finding that he could not stop them without the use of force the Chief told Cox that he must confine the demonstration to the west side of St. Louis Street across from the courthouse.

All the witnesses, including the appellant, state that the time for the demonstration was expressly limited. The State's witnesses say seven minutes, while Cox claims his speech was to be seven minutes but the program would take from 17 to 25 minutes. Regardless of the amount of time agreed upon, it is a novel construction of the facts to say that the grant of permission to demonstrate for a limited period of time was an administrative determination that the west side of the street was not "near" the courthouse. This implies that the amount of time might somehow be relevant in deciding whether an activity is within the prohibitions of the statute. The inclusion of a time limitation is, to me, entirely inconsistent with the view that an administrative determination was made. The only way the Court can support its finding is to ignore the time limitation and hold—as it does *sub silencio*—that once Cox and the 2,000 demonstrators were permitted to occupy the sidewalk they could remain indefinitely. Once the administrative determination was made that the west side of St. Louis Street was not so close to the courthouse as to violate the statute it could not be later drawn within the prohibited zone by

Cox's refusal to leave. Thus the 2,000 demonstrators must be allowed to remain there unless in the meanwhile some other statute empowers the State to eject them. This, I submit, is a complete frustration of the power of the State.

Because I am unable to agree that the word "near" when applied to the facts of this case, required an administrative interpretation, and since I feel that the record refutes the conclusion that it was made, I must respectfully dissent from such a finding.

Nor can I follow the Court's logic when it holds that the case is controlled by *Raley* v. *Ohio, supra*. In *Raley* the petitioners whose convictions were reversed were told that they had a right to exercise their privilege and refuse to answer questions propounded to them in an orderly way during the conduct of a hearing. The administrative determination upon which this Court turns the present case was in actuality made, if at all, in the heat of a racial demonstration in a southern city for the sole purpose of avoiding what had the potentialities of a race riot. In *Raley*, there was no large crowd of 2,000 demonstrators endangering a tenuous racial peace. Indeed, the petitioners in *Raley* might well have chosen to waive their privilege and not been subject to prosecution at all but for the advice tendered them by those conducting the hearing. Here the demonstrators were determined to go to the courthouse regardless of what the officials told them regarding the legality of their acts. Here, like the one petitioner in *Raley* whose conviction was affirmed by an equally divided Court, appellant never relied on the advice or determination of the officer. The demonstration, as I have previously noted, was a *fait accompli*. In view of these distinctions, I can see no enticement or encouragement by agents of the state sufficient to establish a *Raley*-type entrapment.

And even though *arguendo* one admits that the Chief's action was an administrative determination, I cannot see how the Court can hold it binding on the state. It certainly was not made in the free exercise of his discretion.

Reading the facts in a way most favorable to the appellant would, in my opinion, establish only that the Chief of Police consented to the demonstration at that location. However, if the Chief's action be consent, I never knew until today that a law enforcement official—city, state or national—could forgive a breach of the criminal laws. I missed that in my law school, in my practice and for two years while I was head of the Criminal Division of the Department of Justice.

I have always been taught that this Nation was dedicated to freedom *under law* not under mobs, whether they be integrationists or white supremacists. Our concept of equal justice under law encompasses no such protection as the Court gives Cox today. The contemporary drive for personal liberty can only be successful when conducted within the framework of due process of law. Goals, no matter how laudable, pursued by mobocracy in the end must always lead to further restraints of free expression. To permit, and even condone, the use of such anarchistic devices to influence the administration of justice can but lead us to disaster. For the Court to place its imprimatur upon it is a misfortune that those who love the law will always regret.

I must, therefore, respectfully dissent from this action and join my Brother BLACK on this facet of the case. I also agree with him that the statute prohibiting obstruction of public passages is invalid under the Equal Protection Clause.[1] And, as will be seen, I arrive at the same conclusion for the same reason on the question regarding

[1] See Parts I and II of his opinion.

the breach of the peace statute. However, I cannot agree that the latter Act is unconstitutionally vague.

The statute declares congregating "with intent to provoke a breach of the peace" and refusing to disperse after being ordered so to do by an officer to be an offense. Each of these elements is set out in clear and unequivocal language. Certainly the language in the present statute is no more vague than that in the New York statute which was challenged on vagueness grounds in *Feiner* v. *New York*, 340 U. S. 315.[2] There the Court upheld Feiner's conviction on a disorderly conduct charge. I concur completely in the Court's statement that the present case is a "far cry from the situation" presented in *Feiner*.

> There the demonstration was conducted by only one person and the crowd was limited to approximately 80, as compared with the present lineup of some [2,000] demonstrators and [250] onlookers. Perhaps [appellant's] speech was not so animated but in this setting their actions . . . created a much greater danger of riot and disorder. It is my belief that anyone conversant with the almost spontaneous combustion in some Southern communities in such a

[2] Section 722 of the Penal Law of New York in effect at that time stated:

"Any person who with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

"1. Uses offensive, disorderly, threatening, abusive or insulting language, conduct or behavior;

"2. Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

"3. Congregates with others on a public street and refuses to move on when ordered by the police;

"4. By his actions causes a crowd to collect, except when lawfully addressing such a crowd."

> situation will agree that the [Sheriff's] action may well have averted a major catastrophe. [*Edwards* v. *South Carolina*, 372 U. S. 229, 243–244 (dissenting opinion of CLARK, J.).]

Nor can I agree that the instant case is controlled by either *Edwards* v. *South Carolina*, *supra*, or *Fields* v. *South Carolina*, 375 U. S. 44 (1963). Both went off on their peculiar facts and neither dealt with a situation like the one here before the Court. Moreover, *Edwards* and *Fields* involved convictions for common-law breach of the peace and not violation of a statute.

In any event, I believe the language of the breach of the peace statute is as free from ambiguity or vagueness as is the statute prohibiting picketing of a courthouse which the Court today upholds. There the relevant words are "parading in or near a building housing a court of the state . . ." with the intent of obstructing justice. Certainly, both of the statutes are as clear as the words "below cost" which this Court approved in *United States* v. *National Dairy Products*, 372 U. S. 29 (1963), and cases there cited.

However, because this statute contains an express exclusion for the activities of labor unions, I would hold the statute unconstitutional on the equal protection ground my Brother BLACK enunciated with regard to the statute condemning obstruction of public passages.

On these grounds I dissent.

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MR. JUSTICE WHITE, with whom MR. JUSTICE HARLAN joins, concurring in part and dissenting in part.

In No. 49, I agree with the dissent filed by my Brother BLACK in Part III of his opinion. In No. 24, although I do not agree with everything the Court says concerning the breach of peace conviction, particularly its statement concerning the unqualified protection to be extended to Cox's exhortations to engage in sit-ins in restaurants, I agree that the conviction for breach of peace is governed by *Edwards* v. *South Carolina*, 372 U. S. 229, and must be reversed.

Regretfully, I also dissent from the reversal of the conviction for obstruction of public passages. The Louisiana statute is not invalidated on its face but only in its application. But this remarkable emasculation of a prohibitory statute is based on only very vague evidence that other meetings and parades have been allowed by the authorities. The sole indication in the record from the state court that such has occurred was contained in the testimony of the chief of police who, in the process of pointing out that Cox and his group had not announced the fact or purpose of their meeting, said "most organizations that want to hold a parade or meeting of any kind. they have no reluctance to evidence their desires at the

start." There is no evidence in the record that other meetings of this magnitude had been allowed on the city streets, had been allowed in the vicinity of the courthouse or had been permitted completely to obstruct the sidewalk and to block access to abutting buildings. Indeed, the sheriff testified that "we have never had such a demonstration since I have been in law enforcement in this parish." He also testified that "any other organization would have received the same treatment if it had conducted such a demonstration in front of the parish courthouse, whether it had been colored or white, protestant, catholic, Jewish, any kind of organization, if they had conducted this same type of demonstration . . . ." Similarly the trial judge noted that although Louisiana respects freedom of speech and the right to picket, Louisiana courts "have held that picketing is unlawful when it is mass picketing."

At the oral argument in response to MR. JUSTICE GOLDBERG'S question as to whether parades and demonstrations are allowed in Baton Rouge, counsel said, "arrangements are usually made depending on the size of the demonstration, of course, arrangements are made with the officials and their cooperation is not only required it is needed where you have such a large crowd." In my view, however, all of this evidence together falls far short of justification for converting this prohibitory state statute into an open-ended licensing statute invalid under prior decisions of this Court as applied to this case. This is particularly true since the Court's approach is its own invention and has not been urged or litigated by the parties either in this Court or the courts below. Certainly the parties have had no opportunity to develop or to refute the factual basis underlying the Court's rationale.

Under the Court's broad, rather uncritical approach it would seem unavoidable that these same demonstrators

could have met in the middle of any street during the rush hour or could have extended their meeting at any location hour after hour, day after day, without risking any action under this statute for interfering with the normal use of the streets and sidewalks. I doubt that this bizarre intrusion into local management of public streets is either required or justified by the prior cases in this Court.

Furthermore, even if the obstruction statute, because of prior permission granted to others, could not be applied in this case so as to prevent the demonstration, it does not necessarily follow that the federal license to use the streets is unlimited as to time and circumstance. Two thousand people took possession of the sidewalk in an entire city block. Building entrances were blocked and normal use of the sidewalk was impossible. If the crowd was entitled to obstruct in order to demonstrate as the Court holds, it is nevertheless unnecessary to hold that the demonstration and the obstruction could continue *ad infinitum*. Here the demonstration was permitted to proceed for the period of time that the demonstrators had requested. When they were asked to disband, Cox twice refused. If he could refuse at this point I think he could refuse at any later time as well. But in my view at some point the authorities were entitled to apply the statute and to clear the streets. That point was reached here. To reverse the conviction under these circumstances makes it only rhetoric to talk of local power to control the streets under a properly drawn ordinance.